

CONTRACT

This contract is produced by the MASTER BUILDERS ASSOCIATION OF VICTORIA ["MASTER BUILDERS"] as a service to builders and owners who want to enter a contract for building a new home in the State of Victoria.

It complies with the requirements set out in the Domestic Building Contracts Act 1995 for all major domestic building contracts.

PLEASE NOTE:

Master Builders does not represent that any person or organisation that uses this contract is, in fact,

- entitled under the laws, to enter a major domestic (or any) building contract, or
- a member of Master Builders.

Owners should check and verify that

- their builder holds the appropriate registration/s; by contacting the Building Practitioners Board on 1300 360 320
- he she or it is a member of Master Builders; by contacting the Association on 9411-4555 or www.mbav.com.au

For the above reasons Master Builders cannot and does not make any representation regarding – and accepts no responsibility or liability in respect of - the builder's performance or conduct under this particular contract.

BUILDING CONTRACT New Homes

NON MEMBER



9 336870 001870

MEMBER



9 336870 000132

9411 4555
www.mbav.com.au

(MUST BE COMPLETED IN ENGLISH)

Between

.....
(Builder)

-and-

.....
(Owner)

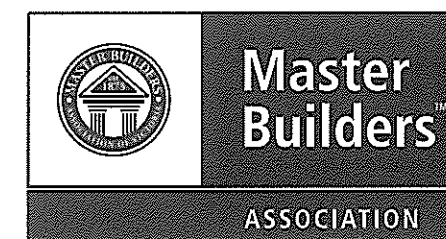
Builder's Copy/Owner's Copy

(Delete as Applicable)

Builder's Job No.

Prepared in accordance with the Domestic Building Contracts Act 1995





NEW HOMES CONTRACT
WHERE THE CONTRACT PRICE IS
MORE THAN \$5,000

(must be completed in English)

Between

Builder

AND

Owner

Builder's Copy / Owner's Copy

(Delete as Applicable)

(Both the Builder and the Owner should retain a fully executed copy of this Contract)

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WARNING

THIS NOTICE SHOULD ONLY BE COMPLETED BY THE OWNER IF THE OWNER WISHES TO WITHDRAW FROM THE CONTRACT WITHIN THE COOLING OFF PERIOD

STATUTORY NOTICE REQUIRED BY SECTION 31(1) OF THE DOMESTIC BUILDING CONTRACTS ACT 1995

COOLING OFF PERIOD

Notice to the Owner:

You may end this **Contract** within five (5) clear **Business Days** after receipt by you of a signed copy of the **Contract** by filling in the notice below and giving it to the **Builder** in one of the following ways:

1. Personally;
2. Leaving it at his or her address set out in the **Contract** with a person who appears to be at least 16 years old;
3. Sending it by pre-paid certified mail to the address set out in this **Contract**;
4. Sending it by facsimile to the facsimile number (if any) set out in this **Contract**.

Detach along dotted line

NOTICE THAT CONTRACT IS ENDED

An **Owner** cannot withdraw from a contract under the **Act** if:

1. The **Builder** and the **Owner** have previously entered into a major domestic building contract that is in substantially the same terms for the carrying out of the **Work** in relation the same home or **Land**; OR
2. The **Owner** received independent legal advice from a practicing solicitor concerning the **Contract** before entering into the **Contract**.

To (**Builder**)

I/We give notice under our **Contract** with you that the **Contract** is ended. Please refund the deposit less \$100 and any out of pocket expenses incurred by you which I have previously approved.

Owner(s) signature:

Date: / /

ANY ENQUIRIES CONCERNING THIS CONTRACT SHOULD BE DIRECTED AS FOLLOWS:

FOR MEMBERS OF MASTER BUILDERS ONLY - CONTACT
THE MASTER BUILDERS ASSOCIATION OF VICTORIA
332 ALBERT STREET, EAST MELBOURNE 3002

FOR OTHERS - CONTACT
YOUR SOLICITOR OR CONSUMER AFFAIRS VICTORIA

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Builder's Initials



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SECTION A - GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

*Note - In this Contract, certain words and phrases used throughout are defined and are shown in bold when used; eg **Owner***

1.0 In this Contract, except where the context otherwise requires -

Act - means the Domestic Building Contracts Act 1995;

Appendix - means the appendix contained in or annexed to this document;

Base Stage - means:-

- For a home with a timber floor, when the concrete footings for the floor are poured and the base brickwork is built to floor level;
- For a home with a timber floor but no base brickwork, when the stumps, piers or columns are completed;
- For a home with a suspended concrete slab floor, when the concrete footings are poured;
- For a home with a concrete floor, when the floor is completed;
- For a home where the exterior walls and roof are constructed before the floor is constructed, when the concrete footings are poured;

Builder - means the person as stated in Item 2 of the **Appendix** and includes permitted assignees and transferees;

Business Day - means a day that is not a Saturday or a Sunday, or a day that is wholly or partly observed as a public holiday throughout Victoria.

Commencement Date - means the date by which the **Builder** will commence to carry out the **Works** on the **Land** as determined in accordance with Clause 8.1 of the **Contract**.

Completion - means when the **Works** to be carried out under the **Contract**:

- have been completed in accordance with the **Plans** and **Specifications**; AND
- if a building permit was issued for the **Works**, the **Owner** is given an **Occupancy Permit**, if required, or in any other case, a copy of the certificate of final inspection.

Completion Date - means the date on which the **Works** are to reach **Completion** under the **Contract** being the date determined in accordance with Clause 8.4 of the **Contract**.

Contract - means this document, the **Plans**, **Specifications**, and other documents annexed to or incorporated by reference in the **Contract**;

Contract Works Policy - means a policy of insurance providing indemnity to the **Builder**, its sub-contractors, the **Owner** and any lending authority (as stated in Item 4 of the **Appendix**) against liability for any physical loss, destruction or damage to the **Works** or to **Materials** and goods upon or adjacent to the **Land**.



Owner(s) Initials /

Builder's Initials



Owner(s) Initials /

Builder's Initials

Construction Period - means the number of **Days** as stated to be the "TOTAL CONSTRUCTION PERIOD INCLUDING DELAY DAYS" in Item 9.2 K of the **Appendix**.

Contract Price - means either the sum stated in Item 10.1 of the **Appendix** or that sum as may be adjusted and payable under this **Contract**. The contract price is **GST** inclusive.

Days - means calendar days.

Defects Liability Period - means the period stated (if any) in Item 14 of the **Appendix**.

Deposit - means the initial sum to be paid by the **Owner** to the **Builder** pursuant to Clause 11.6 of this **Contract** and as stated in Item 10.2 of the **Appendix**. The deposit is **GST** inclusive.

Existing Building - means any building or structure upon the **Land** on which the **Works** are to be carried out.

Final Claim - means the **Builders'** claim upon **Completion** of the **Works** for the balance of the **Contract Price** together with any other monies payable by the **Owner** (including any interest) under the **Contract**. The final claim is **GST** inclusive.

Final Payment - means the amount stated in the **Final Claim** to be paid by the **Owner** to the **Builder** upon **Completion** of the **Works**. The final payment is **GST** inclusive.

Foundations Data - has the same meaning as in Section 30 of the **Act**.

Frame Stage - means when the home's frame is completed and approved by a building surveyor.

Fixing Stage - means when all the internal cladding, architraves, skirtings, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of the home are fitted and fixed in position.

Land - means the land described in Item 4 of the **Appendix** on which the **Works** are to be carried out.

Land Owner - means a registered proprietor of the **Land** as stated on the Certificate of Title or abstract of chain of title relating to the **Land**.

Land Owner's Consent - means the written consent obtained by the **Owner** (if required) under Clause 7.1 from all the **Land Owners** consenting to the carrying out of the **Works** by the **Builder** on the **Land**.

Liquidated Damages - means the pre-agreed amount stated (if any) in Item 17 of the **Appendix** which may be payable to the **Owner** by the **Builder** in accordance with Clause 18 of this **Contract**, or the preagreed amount (if any) stated in item 17a of the **Appendix** which may be payable to the **Builder** by the **Owner** in accordance with clause 15.4 of this **Contract**. Liquidated damages are GST- inclusive.

Lock up Stage - means when the home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary).

Materials - means all items (not being work or equipment) supplied by the **Builder** or the **Owner** for the purpose of carrying out the **Works**.

Occupancy Permit - means an occupancy permit issued under the Building Act 1993.

Original Contract Price - means the sum stated in Item 10.1 of the **Appendix**.

Owner - means the person named in Item 1 of the **Appendix** and includes the **Owner's** respective heirs, executors, administrators and permitted assignees and transferees.

Owner's Agent - means the person appointed in accordance with Clause 25.10 of this **Contract**.

Plans - means all plans, drawings and designs relating to the **Works** described in Item 7 and Item 8 (if applicable) of the **Appendix**.

Possession - means when the **Works** or any portion of the **Works** are taken over, occupied or used by the **Owner** or by any tenant of the **Owner** or the **Owner's** employees or agents.

Prime Cost Item - means an item (for example, a fixture or fitting) that either has not been selected, or whose price is not known at the time the **Contract** is entered into and for the cost of supply and delivery of which the **Builder** must make a reasonable allowance in the **Contract**.

Progress Claim - means each claim made by the **Builder** to the **Owner** for each of the **Stages**.

Progress Payment - means all monies due and payable by the **Owner** to the **Builder** during the carrying out of the **Works** at the completion of each **Stage**.

Provisional Sum - means an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) under the **Contract** for which the **Builder**, after making all reasonable inquiries, cannot give a definite amount at the time the **Contract** is entered into.

Specifications - means the specifications described in Item 6 of the **Appendix** and also includes and incorporates the Standards and Tolerances Guide produced by the Building Commission as applicable at the date of this **Contract**.

Stages - means those stages of the **Works** being **Base Stage**, **Frame Stage**, **Lock-up Stage** and **Fixing Stage** under Progress Payment Table Method A in Item 23.1 of the **Appendix** or (if applicable) other stages as specified in Progress Payment Table Method B in Item 23.2 of the **Appendix**.

Works - means the work described in Item 5 and Item 9.3 (if applicable) of the **Appendix** and described in more detail in the **Plans** and **Specifications** which is to be carried out under this **Contract** on the **Land** by the **Builder**.



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

General Conditions

General Conditions

2. INTERPRETATION

- 2.1 Clause headings, sub-clause headings, and boxed explanatory notes contained in this **Contract** shall not form part of and shall not be used in the interpretation of this **Contract**.
- 2.2 Words in the singular include the plural and vice versa, according to the requirements of the context.
- 2.3 Words importing a gender include every gender.
- 2.4 References to a person includes an individual, firm or corporated or unincorporated body.
- 2.5 If the time for giving any notice, making any payment or doing any other act required or permitted by the **Contract** falls on a day which is not a **Business Day**, then the time for giving the notice, making the payment or doing the other act shall be deemed to be the next **Business Day**.

3. DISCREPANCIES AND AMBIGUITIES

- 3.1 **Parties to consult if discrepancy or ambiguity found**
 If either party finds any discrepancy or ambiguity in this **Contract** that party must notify the other party in writing. The parties agree to consult with each other to attempt to resolve the discrepancy or ambiguity. Failing resolution the discrepancy or ambiguity shall be resolved in accordance with Clause 3.2.
- 3.2 **Order of precedence of documents**
 Subject to Clause 3.1 any discrepancy or ambiguity in or between any document comprising the **Contract** shall be resolved by adopting the following order of precedence:
 - special conditions (if any);
 - this document including the **Appendix** (excluding any special conditions);
 - the **Specifications**;
 - the **Plans**;
 - any other documents.
- 3.3 **Figured dimensions prevail over scaled dimensions**
 Where any discrepancy exists between figured and scaled dimensions in the **Plans**, the figured dimensions shall prevail. All dimensions are approximate to the extent that they are based on dimensions estimated from any **Existing Building**.



Owner(s) Initials /

Builder's Initials.....

4. APPROVAL TO COMMENCE BUILDING WORK

- 4.1 **Necessary steps to be taken to obtain any required permits**
 The **Builder** or **Owner** as stated in Item 11.3 of the **Appendix** (if applicable) will take all necessary and reasonable steps to obtain the necessary building and/or planning permits to commence the **Works** on the **Land**.
- 4.2 **A party may terminate if necessary permits not obtained within 60 days**
 If the necessary building and/or planning permits are not obtained within sixty (60) **Days** of the date of the signing of this **Contract**, then either party may give written notice to the other party terminating this **Contract** without liability to the other, except only that the **Builder** shall be entitled to be paid a reasonable sum for services lawfully performed and expenses incurred under this **Contract** to the date of termination, and this amount shall be a debt due and payable by the **Owner** to the **Builder** and shall be recoverable accordingly.
- 4.3 **Excess amount from deposit to be refunded to owner on termination.**
 If the **Builder** has received payment of the **Deposit** from the **Owner** and that amount is in excess of the amount payable to the **Builder** under Clause 4.2, the **Builder** will refund any excess to the **Owner** within seven (7) **Days** of termination of this **Contract** under Clause 4.2.
- 4.4 **Permit is a pre-condition of Commencement**
 The **Owner** may not instruct the **Builder** to commence or carry out any building work until the **Builder** has been given a copy of each relevant permit.
 If the **Commencement Date** shown in Item 9.1 of the **Appendix** falls earlier than the date on which the **Builder** is given a copy of each relevant permit, the **Builder** is entitled to an extension of the **Completion Date** by the number of **Days** between the stated **Commencement Date** and the date on which the last of the relevant permit copies is first given to the **Builder**.

5. INSURABLE DOMESTIC BUILDING CONTRACTS (WARRANTY INSURANCE)

- 5.1 **Definitions**
Insurable domestic building contracts are those major domestic building contracts that the **Act**, the Regulations or the Ministerial Orders made under the **Act** require, at the date on which this **Contract** is entered, to be covered by a **complying warranty insurance policy**.
Complying warranty insurance policies are applicable warranty insurance policies of the kind (or kinds) that comply with all the provisions set out in the relevant Ministerial Order/s in force at the date on which the domestic building contract is entered.
- 5.2 **Application to this Contract**
 Independent legal advice should be sought by each party concerning whether or not this **Contract** is an **insurable domestic building contract**.



Owner(s) Initials /

Builder's Initials.....

If - and only if - this is an **insurable domestic building contract**, then all the references to "warranty insurance" in this document (including sub-clauses 5.3 – 5.5 below) will apply to the **Contract**. Otherwise all provisions will be void to the extent that they deal with warranty insurances.

5.3 Before the Builder may enter an insurable domestic building contract

Except as set out in clause 5.4 below, the **Builder** may not enter an **insurable domestic building contract** unless and until the **Builder** has

- (a) obtained a **complying warranty insurance policy**; and
- (b) the policy covers the building work to be carried out under the **Contract**; and
- (c) the **Builder** has provided a copy of the above policy to the **Owner**.

5.4 Alternative to clause 5.3

5.4.1 Despite the provisions of clause 5.3 above, a **Builder** may enter this **Contract** before obtaining the required policy, but only on the following conditions:

- (a) the **Builder** must obtain a **complying warranty insurance policy**; and
- (b) the policy must cover (or must be extended to cover) the building work to be carried out under the **Contract**; and
- (c) until the **complying warranty insurance policy** (or the extension) has been issued by the Insurer no domestic building work is carried out under the **Contract**; and
- (d) the **Builder** must provide to the **Owner** a copy of the policy within seven (7) days of the date on which the policy (or the extension) is issued.

5.4.2 Whenever clause 5.4.1 is relied upon, the **Builder** is not entitled to

- (a) demand, receive or accept any payment under the **Contract** (including the payment of any deposit money); or
 - (b) enforce any other provision of the **Contract**
- until all of the conditions of Clause 5.4.1 have been satisfied.

5.5 Costs of warranty insurance

In all cases, the costs and expenses of, and associated with, obtaining the required warranty insurances must be borne by the **Builder**.

6. GENERAL INSURANCE

6.1 Builder's obligation to comply with WorkCare requirements

The **Builder** will comply with all laws relevant to accident compensation applicable to all workers engaged in the **Works** or on the **Land**.

6.2 Contract works policy to be provided by builder

The **Builder** will provide and maintain a current **Contract Works Policy** from the **Commencement Date** until **Completion** or **Possession** of the **Works** by the **Owner**, whichever is earlier.

6.3 Public liability insurance to be provided by builder

The **Builder** will have in place or take out a public liability insurance policy and indemnify the **Owner** against liability for:

- the personal injury or death of any person caused by accident;

AND

- loss or damage to property;

arising out of the **Works** from the **Commencement Date** until **Completion** or **Possession** of the **Works** by the **Owner**, whichever is earlier.

6.4 Public liability insurance to be in joint names and for specified amount

The public liability insurance to be obtained by the **Builder** pursuant to Clause 6.3 will be in the joint names of the **Owner**, the **Builder** and all sub-contractors for an amount which is not less than \$5 million for any one claim, unless otherwise specified in Item 16 of the **Appendix**.

6.5 No responsibility on builder if injury, death, loss or damage caused by owner

Notwithstanding Clauses 6.1 to 6.4 inclusive, as far as is permitted by law the **Builder** is not liable for and does not indemnify the **Owner** or the **Owner's** employees or agents or any other person for whom the **Owner** is responsible, for any personal injury or death to any person or loss or damage to any property as a result of any act or omission by the **Owner** or any person for whom the **Owner** is responsible and in respect of such claims the **Owner** indemnifies the **Builder**.

6.6 Evidence of policies to be provided by the builder upon written request

The **Builder** will, on written request from the **Owner**, provide evidence of any insurance required to be effected by the **Builder** under Clause 6 within seven (7) **Days** of any such request.

7. THE LAND

7.1 Evidence of title to the land

The **Owner** must provide to the **Builder**, no later than on the fourteenth day after the date on which this **Contract** is signed:

- an authenticated current copy and extract of the Certificate/s of Title/s to the **Land** (or of the appropriate other instruments whenever the title to the **Land** is not of the Torrens system); and
- the names of all current registered proprietors as noted on and disclosed by the title documents, or who may be otherwise registered in the Office of Land Titles; and
- full details of all easements, covenants, interests and other restrictions and encumbrances which affect or may affect the **Land** or its use; and
- all Plans of Subdivision pertaining or relevant to the **Land** or its use

General Conditions

General Conditions



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

General Conditions

7.2 Licences

7.2.1 Each **Owner** hereby grants to the **Builder** an irrevocable licence to free and uninterrupted access to and occupation of the **Land** (including any relevant existing buildings and other items on the **Land**), as the **Builder** reasonably requires to enable him her or it to fully and properly comply with all his her or its obligations under this **Contract** and at law.

7.2.2 This licence does not expire until the **Builder** has received payment in full of the final claim, or until such earlier time (if any) as the **Builder** may agree in writing.

7.3 Consents by registered proprietors

Each **Owner** hereby warrants that he, she or it will obtain from each person registered as a proprietor of the land (if there is such a person, or if there are such persons, other than the **Owner/s**)

- a written consent to the **Works** of the **Contract** being carried out on the **Land** pursuant to and in accordance with this **Contract**; and
- a written licence in identical terms to those in Clause 7.2.

7.4 Fundamental breaches (etc)

Any

failure or refusal by the **Owner/s** to fully comply with the warranty given in Clause 7.3

and /or

breach, or actual, attempted or purported withdrawal, cancellation, infringement or restriction (whether by the **Owner**, by any registered proprietor or by any other person for whom the **Owner** is responsible) of any one or more of the licences given under Clause 7.2 or 7.3, or of any one or more of the consents obtained or given under Clause 7.3

will constitute a fundamental breach of this **Contract** by the **Owner**.

7.5 All-weather access for vehicles

The cost of providing any access to the **Land** for any vehicle or machinery reasonably necessary for the carrying out of the **Works** or for the delivery of **Materials** (being only those to be provided by the **Builder**) are included in the **Contract Price** unless otherwise stated in this **Contract**.

7.6 Owner's right to view the works upon request

Upon request by the **Owner** the **Builder** will give to the **Owner**, the **Owner's Agent** or any authorised officer of the lending authority (if any) reasonable access to the **Land** and to view any part of the **Works**.

7.7 Identification of land to be provided by Owner

The **Owner** will clearly identify the **Land** with a sign stating the name of the **Owner** and the lot or street number.

7.8 Evidence of boundaries or position of the land to be provided by owner

The **Owner** will, within seven (7) **Days** of signing this **Contract**, give to the **Builder** satisfactory evidence of the boundaries or position of the **Land** and the **Owner** warrants that any such evidence given to the **Builder** will be accurate and correct and will indemnify the **Builder** accordingly.

7.9 Owner's failure to provide evidence of boundaries or position of the land

Should the **Owner** fail to give the **Builder** satisfactory evidence as required by Clause 7.7, the **Builder** may in writing request the **Owner** to obtain a survey of the **Land**. Should the **Owner** fail to do so within seven (7) **Days** of the date of the **Builder's** request, the **Builder** may arrange for a survey of the **Land** and the **Owner** will pay the actual cost of the survey plus 15% for overhead and profit to the **Builder** with the next **Progress Payment**.

General Conditions

8. COMMENCEMENT DATE AND COMPLETION DATE

8.1 Commencement date

Subject to the applicable provisions (if any) of Clause 5, the **Builder**:

- (i) will commence construction of the **Works** on the date (if any) specified in item 9.1 of the **Appendix**;

OR

- (ii) will do everything that is reasonably possible for the **Builder** to do to ensure that construction of the **Works** will start within fourteen (14) days following the receipt by the **Builder** of all of the following documents:

- satisfactory written evidence of the title to the **Land** (together with full details of all easements, restrictions or covenants that affect or may affect the **Land**) as required by Clause 7.1; **AND**
- satisfactory evidence of the **Owner's** capacity to pay the **Contract Price**, pursuant to Clauses 11.1, 11.2 and 11.3; **AND**
- all necessary valid and current building and/or planning permits as required pursuant to Clauses 4.1 and 4.4; **AND**
- the consents and licences of the registered proprietors, where these are required, pursuant to Clause 7.3.

8.2 Commencement notice

Within one working day after having commenced to construct the **Works**, the **Builder** must give a written notice to the **Owner**. The notice must state the following:

- The **Builder** has commenced construction of the **Works** under the **Contract**; **AND**
- The date on which construction of the **Works** commenced (the actual commencement date); **AND**



Owner(s) Initials..... /.....

Builder's Initials.....



Owner(s) Initials..... /.....

Builder's Initials.....

- The **Construction Period** (as set out in item 9.2 K of the **Appendix**) started to run on that actual commencement date; AND
- The **Completion Date**, having regard to the actual commencement date and the **Construction Period**.

8.3 Reasonable allowances are included for certain delays

In calculating the number of days required to reach **Completion** the **Builder** has made reasonable allowances for all the events listed under headings "A" to "H" inclusive in Item 9.2 of the **Appendix**. These estimated delays are shown in Item 9.2 of the **Appendix** and are included in the **Construction Period** for the **Works** under the **Contract**.

8.4 Works to be completed by the completion date

The **Builder** agrees to reach **Completion** on the **Completion Date**, which is calculated with reference to the actual commencement date and to the **Construction Period** (and which is also advised in the notice under clause 8.2).

However, this obligation is subject to extensions to the **Completion Date** to which the **Builder** is, or may become, entitled under the **Contract** or otherwise.

9. PRIME COST ITEMS AND PROVISIONAL SUMS

WARNING TO BUILDING OWNER AS TO PRIME COST ITEMS

It is always better to get a fixed price for all work. However, some fixtures and fittings may need to be selected after the **Contract** is signed, eg. a stove, type of taps etc. If these items are specified as **Prime Cost Items** the **Builder** will allow an amount in the **Contract Price** which should cover the expected cost of the item.

NOTE: If the actual cost is more than the amount allowed you will have to pay the extra amount. You may also have to pay the **Builder's** margin on the extra amount. If this is intended, the **Builder's** margin should be specified, or cannot be claimed unless the **Owner** agrees in writing to such additional amount. If the prime cost is less than that allowed for in the **Contract**, the difference should be deducted from the **Contract Price**.

9.1 Provisional sums warranty

The **Builder** warrants that any **Provisional Sum** included by the **Builder** in the **Contract** has been calculated with reasonable care and skill taking account of all information reasonably available at the date the **Contract** was made, including the nature and location of the **Land**.

9.2 Owner to provide directions relating to prime cost items or provisional sums

If this **Contract** makes allowance for any **Prime Cost Item** or a **Provisional Sum**, the **Owner** will give to the **Builder** all necessary written and signed directions requested by

the **Builder** regarding the selection or supply of the goods or work represented by either a **Prime Cost Item** or a **Provisional Sum** within seven (7) **Days** of receiving a request from the **Builder** for such directions.

9.3 Where a prime cost item is unavailable

If any **Prime Cost Item** selected by the **Owner** is unavailable, then the **Owner** will specify in writing to the **Builder** an alternative item to be supplied within seven (7) **Days** of the **Builder's** request to do so.

9.4 If owner fails to specify alternative prime cost item

The **Builder** will be entitled to select and supply an alternative **Prime Cost Item**, as near as reasonably possible in quality to the original **Prime Cost Item**, if the **Owner** fails to specify to the **Builder** in writing the alternative item to be supplied within seven (7) **Days** of the **Builder's** request under Clause 9.3.

9.5 Amounts not fully expended on prime cost items or provisional sums

Any amount of a **Prime Cost Item** or **Provisional Sum** which is not expended shall be deducted from the **Contract Price** and deducted from the next payment payable under this **Contract**.

9.6 Contract price to be adjusted for amount expended in excess of prime cost item or provisional sum allowed

If the amount expended on a **Prime Cost Item** or **Provisional Sum** is in excess of the sum allowed for that item, the excess amount plus the **Builder's** margin as stated in Item 21 or Item 22 (as applicable) in the **Appendix** will be added to the **Contract Price** and paid to the **Builder** in the next payment payable under this **Contract**.

9.7 Prime cost allowance made includes the cost of supply and delivery

In making an allowance for a **Prime Cost Item**, the amount allowed for includes the cost of supply and delivery of the **Prime Cost Item**, and the amount stated is based upon prices obtained from the **Builder's** usual or preferred suppliers.

9.8 Amount for installation, builder's profit and overheads is included in the contract price

Any amount for installation, **Builder's** profit and overheads for a **Prime Cost Item** is included in the **Contract Price** unless otherwise stated in this **Contract**.

9.9 Builder to provide copies of invoices, receipts etc to the owner

The **Builder** will give to the **Owner** a copy of any invoice, receipt or other document that shows the actual cost incurred to the **Builder** for any **Prime Cost Item** or that relates to any **Provisional Sum** and will do so as soon as is reasonably possible after receiving the invoice, receipt or document.

General Conditions

General Conditions



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

General Conditions

General Conditions

10. BUILDER'S OBLIGATIONS

10.1 The Builder's warranties

The **Builder** gives to the **Owner** the following warranties contained in Section 8 of the **Act**:

- The **Builder** will carry out the **Works** in a proper and workmanlike manner and in accordance with the **Plans** and **Specifications** set out in the **Contract**.
- **Materials** supplied by the **Builder** for use in the **Works** will be good and suitable for the purpose for which they are to be used and, unless otherwise stated in the **Contract**, those **Materials** will be new.
- The **Builder** will carry out the **Works** in accordance with all laws and legal requirements including, without limiting the generality of this warranty, the Building Act 1993 and the regulations made under that Act.
- The **Builder** will carry out the **Works** with reasonable care and skill and will achieve **Completion** by the date (or within the period) specified in the **Contract**.
- If the **Works** consist of the erection or construction of a home or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the **Builder** will carry out the **Work** so the home will be suitable for occupation at the time the **Works** achieve **Completion**.
- If the **Contract** states the particular purpose for which the **Works** are required, or the result which the **Owner** wishes the **Works** to achieve, so as to show that the **Owner** relies on the **Builder's** skill and judgement, the **Builder** warrants that the **Works** including any **Materials** used will be reasonably fit for that purpose or be of such a nature and quality as they might reasonably be expected to achieve that result.

10.2 No liability for breach of a warranty if breach already known to owner

The **Builder** is not responsible or liable for breach of any of the warranties contained in Clause 10.1 of this **Contract** or section 8 of the **Act** if the breach of any warranty was known, or ought reasonably to have been known, to the **Owner** to exist at the time this **Contract** was executed.

10.3 Written progress claims and final claim to owner

The **Builder** will give to the **Owner**

- Written progress payment claims; at the completion of each stage specified in Item 23.1 of the **Appendix** ("Method A") or at the times implied by Item 23.2 of the **Appendix** ("Method B") – whichever applies to this **Contract**; and
- A written **Final Claim** at **Completion**.

10.4 Each progress claim and the final claim to show certain details

Each **Progress Claim** and the **Final Claim** submitted by the **Builder** to the **Owner** will show the following details:

- A The sum paid or to be paid by the **Owner** under the **Contract** for the **Deposit** and all **Stages** completed to date;
- B The amount of all completed variations to date, together with a schedule of all such variations;

- C The total sum of A and B above;
- D The total sum of payments already made by the **Owner** to the **Builder**, together with a schedule of all such payments;
- E The amount claimed by the **Builder** taking into account all payments already made by the **Owner** to the **Builder** under the **Contract** (i.e. C less D).

NOTE:

Nothing in this Clause operates to prevent the **Builder** from showing any other or any additional matter or detail on any of its progress or final payment claims.

10.5 If any materials are unavailable builder will notify owner

If any material specified in this **Contract** (excluding any **Prime Cost Item**) is unavailable, then the **Builder** will, upon becoming aware of its unavailability, notify the **Owner** of its unavailability and may submit a written variation to the **Owner** in accordance with Clause 13

11. OWNER'S OBLIGATIONS

11.1 Evidence of capacity to pay the contract price

The **Owner** will within fourteen (14) **Days** of the **Owner** signing the **Contract**, provide written or other reasonable evidence to the **Builder** that the **Owner** has the financial capacity to pay the **Contract Price**.

11.2 Continuing obligation upon owner to provide evidence of capacity to pay

The obligation of the **Owner** to provide evidence of capacity to pay the **Contract Price** is a continuing obligation until the **Works** have reached **Completion**.

11.3 Builder may request evidence of capacity to pay during the contract

The **Builder** may at any time until the **Works** have reached **Completion**, request the **Owner** to provide written or other reasonable evidence of capacity to pay the balance of the **Contract Price** or any variation notwithstanding the fact that the **Owner** has previously provided such evidence to the **Builder** under the **Contract**, and the **Owner** will, within fourteen (14) **Days** of any request, provide evidence of such capacity to pay.

11.4 Owner's obligations if capacity to pay is reduced or ceases

The **Owner** will immediately notify the **Builder** if at any time during the **Works** the **Owner's** capacity to pay the **Contract Price** or the balance of the **Contract Price** is in any way reduced or ceases.

11.5 Owner's obligation to pay the contract price

The **Owner** will pay the **Builder** the **Contract Price** in accordance with this **Contract**.

11.6 Owner's obligation to pay deposit

The **Owner** must pay to the **Builder** the **Deposit** specified in item 10.2 of the **Appendix**. This **Deposit** must be paid on demand, but no demand may be made by the **Builder** for it to be paid

- unless the **Builder** has complied with its obligations under clause 5.3;
- OR
- until the **Builder** has complied with its obligations under clause 5.4.1 whichever applies to this **Contract**. (See also Clause 5.4.2)



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

In the event that the **Owner** validly exercises its rights (if any) under the Cooling Off provisions of the Act, the **Builder** will refund to the **Owner** any deposit that the **Owner** may have already paid. HOWEVER, pursuant to Clause 7.3, the **Builder** may retain from the refund: -

- one hundred dollars (\$100.00) plus
- any out of pocket expenses or disbursements that the **Builder** may have already incurred, with the prior approval of the **Owner**.

11.7 Limits on deposit payable by the owner

The **Deposit** to be paid by the **Owner** will not be:

- more than 5% of the **Original Contract Price** if the **Original Contract Price** is \$20,000 or more;
- OR
- more than 10% of the **Original Contract Price** if the **Original Contract Price** is less than \$20,000.

11.8 Owner to pay progress payments

The **Owner** will make **Progress Payments** to the **Builder** in accordance with the agreed and completed Progress Payments Table as set out in Item 23 of the **Appendix**.

11.9 Owner to pay progress claims within the stated period

The **Owner** will pay each **Progress Claim** to the **Builder** within the period stated in Item 12 of the **Appendix**.

11.10 Interest payable on outstanding payments

If the **Owner** should fail to make any payment to the **Builder** by the due date under this **Contract**, the **Builder** will be entitled to interest on all outstanding amounts at the rate specified in Item 15 of the **Appendix**, payable from the due date until the payment has been made in full.

11.11 Materials supplied by owner to be good and suitable for their purpose

If the **Owner** supplies **Materials** for use in the **Works**, the **Owner** will supply such **Materials** which are good and suitable for the purpose for which they are to be used and, unless otherwise stated in the **Contract**, those **Materials** will be new.

11.12 Any plans or specifications supplied by owner to be accurate and sufficient number of copies to be provided

Whenever the **Owner** supplies **Plans** and/or **Specifications** to the **Builder**, the **Owner**:

- warrants that the **Plans** and/or **Specifications** supplied are accurate and correct and good and suitable for the purpose for which they are to be used; **AND**
- acknowledges that it is reasonable for the **Builder** to rely on the **Plans** and/or **Specifications** supplied and that the **Builder** intends to rely upon any **Plans** and/or **Specifications** supplied for the purpose of carrying out the **Works**;

AND

- the **Owner** will supply sufficient number of copies to enable the **Builder** to undertake the **Works** and to obtain the necessary permits, if the **Builder** is required to do so under this **Contract**.

11.13 Foundations data provided by owner to be accurate and may be relied upon by the builder

Whenever the **Owner** provides **Foundations Data** to the **Builder**, the **Owner**:

- warrants that the **Foundations Data** provided is accurate and correct; **AND**
- acknowledges that it is reasonable for the **Builder** to rely on the **Foundations Data** provided and that the **Builder** intends to rely on it for the purpose of carrying out the **Works**.

11.14 Owner's obligation not to interfere

The **Owner** must not do, or countenance or permit to be done, anything that may obstruct, interfere with or hinder the **Builder** in carrying out its obligations under the **Contract** and otherwise.

Without limitation, the **Owner** must ensure that the **Owner**, the **Owner's Agent** and all persons for whom the **Owner** is responsible refrain at all times from:

- communicating directly with, or giving any instructions to, any of the **Builder's** employees, consultants, subcontractors or suppliers, and all other persons, consultants, subcontractors or suppliers involved on the project; with the sole exception of those with whom the **Owner** may have entered separate contracts.

The **Owner** must also ensure that no animals over which it may have any control obstruct, interfere with or hinder the **Builder** or the progress of the **Works**.

11.15 Owner to act in furtherance of program

Whenever under the provisions of the **Contract** it is, or becomes, necessary for the **Owner** to make any decision or selection, or to supply any information, instruction, advice, equipment, materials and/or labour, or to do any other act, the **Owner** shall ensure that such act is done at the time and in a manner that enables the **Builder** to meet its program.

12. VARIATIONS BY THE OWNER

12.1 Notice required when owner requests a variation

If the **Owner** wishes to vary the **Plans**, or **Specifications** then the **Owner** will give to the **Builder** a written notice describing the variation requested.

12.2 Builder not obliged to perform variation but may agree to do so

If the **Builder** reasonably believes that the variation requested in writing by the **Owner**:

- will not require an amendment to any permit; **AND**
- will not cause any delay in reaching **Completion**; **AND**
- will not add any more than 2% to the **Original Contract Price**;

THEN

the **Builder**, although not obliged to, may at its discretion carry out the variation.



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

12.3 Builder to provide notice to owner in certain circumstances

If the **Builder** reasonably believes that:

- an amendment to any permit will be necessary; OR
- there will be delay in reaching **Completion**; OR
- the variation will add more than 2% to the **Original Contract Price**;

THEN

- upon receipt of the written variation notice from the **Owner**, the **Builder** will give to the **Owner** a written notice that either:
 - (a) states that the **Builder** refuses to or is unable to carry out the variation and the reason for that inability or refusal;

OR

 - (b) states that the **Builder** will carry out the variation and if so, the **Builder** will in the notice:
 - (i) state the effect the variation will have on the **Works** as a whole being carried out under the **Contract**;
 - (ii) state whether or not an amendment to any permit will be required;
 - (iii) give a reasonable estimate of any delay in reaching **Completion**;
 - (iv) state the cost of the variation; and
 - (v) state the effect of that cost on the **Contract Price**.

12.4 Builder not to commence variation until certain matters satisfied

The **Builder** will not commence any variation requested by the **Owner** unless either:

- the **Owner** has given to the **Builder** a signed written request for the variation and that written request is attached to the notice required by the **Builder** under Clause 12.3;

OR

- the **Builder** reasonably believes that the variation requested by the **Owner**:
 - (i) will not require any amendment to any permit; AND
 - (ii) will not cause any delay in reaching **Completion**; AND
 - (iii) will not add more than 2% to the **Original Contract Price**.

12.5 If variation decreases contract price, adjustment to be made in the next progress claim or the final claim

If any variation requested by the **Owner** and agreed to by the **Builder** should result in a decrease to the **Contract Price**, the amount of the variation will be deducted by the **Builder** from the next **Progress Claim** or the **Final Claim** (whichever is applicable), unless otherwise agreed.

12.6 Owner to pay deposit for a variation in certain circumstances

If a variation is requested by the **Owner** and the **Builder** agrees to carry out the variation, and the variation results in an increase to the **Contract Price**, the **Owner** will if requested by the **Builder**, pay to the **Builder**, prior to the commencement of the variation:

- 10% of the total cost of the variation, where the total cost of the variation is less than \$20,000.00;
- OR
- 5% of the total cost of the variation, where the total cost of the variation is \$20,000.00 or more.

12.7 Builder under no obligation to commence any variation until owner provides the required deposit and evidence of capacity to pay

The **Builder** is under no obligation to commence any variation, until such time as the **Owner**:

- has paid to the **Builder** the 10% or 5% (whichever is applicable) of the total cost of the variation if the deposit is requested by the **Builder** under clause 12.6;

AND

- produces written or other satisfactory evidence to the **Builder** (if requested by the **Builder** under Clause 11.3) showing that the **Owner** has the financial capacity to pay the cost of the variation.

12.8 Owner's obligation to pay for variation

Whenever the **Builder** has, under Clause 12.4 or 13.2, accepted an obligation to carry out a variation then the **Owner** hereby agrees to **PAY** to the **Builder**:

- the agreed variation price
- OR
- if the variation falls within clause 12.2 and no price had been agreed for the variation, the documented cost of carrying out the variation plus 15% of that cost for the **Builder's** margin

LESS

- any deposit that the **Owner** may have already paid in respect of that variation under Clause 12.6.

The **Builder** may include in its payment claims amounts of money in respect of all additional work completed [and related materials and services provided] to the date of the claim.

12.9 Variation provisions not applicable to prime cost items or provisional sums

The variation provisions of this Clause 12 do not apply to any **Prime Cost Items** or **Provisional Sums** included in this **Contract**.

13. VARIATIONS BY THE BUILDER

13.1 Notice required when builder requests a variation

If the **Builder** wishes to vary the **Plans** or **Specifications**, then the **Builder** will give the **Owner** a written notice that -

- describes the variation; AND
- states why the **Builder** wishes to make the variation; AND
- states the effect the variation will have on the **Works**; AND
- states whether or not an amendment to any permit will be required; AND
- gives a reasonable estimate of any delay (if any) in reaching **Completion** the variation is likely to cause; AND
- states the cost of the variation; AND
- states the effect of that cost on the **Contract Price**.

General Conditions

General Conditions



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

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13.2 Variations only to be performed in certain circumstances

The **Builder** will not give effect to any variation requested by the **Builder** unless either:

- the **Owner** has given the **Builder** a signed consent to the variation attached to a copy of the notice required by Clause 13.1;

OR

- the following circumstances apply -
 - a building surveyor or other authorised person under the Building Act 1993 issued a building notice or order under that Act requiring the variation to be made; AND
 - the variation arose as a result of circumstances beyond the control of the **Builder**; AND
 - the **Builder** has given the **Owner** a copy of the building notice or building order, with the notice required by Clause 13.1; AND
 - the **Owner** does not notify the **Builder** in writing within five (5) **Business Days** of receiving the notice required by Clause 13.1 that the **Owner** wishes to dispute the building notice or building order.

13.3 If variation decreases contract price, adjustment is to be made in the next progress claim or the final claim

If any variation requested by the **Builder** and agreed to by the **Owner** should result in a decrease to the **Contract Price**, the amount of the variation will be deducted by the **Builder** in the next **Progress Claim** or the **Final Claim**, whichever is applicable.

13.4 Variation provisions not applicable to prime cost items or provisional sums

The variation provisions of this Clause 13 do not apply to any **Prime Cost Items** or **Provisional Sums** included in this **Contract**.

14. ADDITIONAL AMOUNTS FOR EXCAVATIONS OR FOOTINGS

14.1 Builder generally not entitled to extra amounts for excavations or footings

After entering into this **Contract** the **Builder** cannot seek from the **Owner** an amount of money not already provided for in the **Original Contract Price** if the additional amount could reasonably have been ascertained had the **Builder** obtained all the **Foundations Data** required under the **Act**.

14.2 Builder's entitlement to extra amounts for excavations and footings

The **Builder** will be entitled to claim an amount of money not already provided for in the **Original Contract Price** if the need for the additional amount could not reasonably have been ascertained from the **Foundations Data**.

14.3 Owner to pay additional cost if builder entitled to extra amount

If the **Builder** is entitled to any additional amounts which could not reasonably have been ascertained for excavations or footings under this **Contract** or the **Act**, the **Owner** will pay to the **Builder**, in the **Builder's** next **Progress Claim**, the agreed cost of the additional work or, if the cost is not agreed, the cost incurred by the **Builder** plus 15% for the **Builder's** margin.



Owner(s) Initials

Builder's Initials

15. DELAYS AND EXTENSION OF TIME CLAIMS

15.1 Builder's entitlement to extensions of time

If the progress of the **Works** is delayed by:

- any variations under this **Contract**; OR
- proceedings being taken or threatened by or disputes with adjoining neighbouring owners or residents; OR
- any industrial action or civil commotion affecting the **Works** or any of the trades employed upon the **Works** or affecting the manufacture or supply of **Materials** for the **Works**; OR
- the general unavailability of any **Materials** necessary to carry out the **Works**; OR
- inclement weather or any condition as a result of inclement weather in excess of the reasonable allowance stated in A and B of Item 9.2 of the **Appendix**; OR
- any act, default or omission on the part of the **Owner**, or breach of the **Contract** by the **Owner**, including failure by the **Owner** to provide to the **Builder** any information requested by the **Builder** under Clause 9.2 relating to **Prime Cost Items** and **Provisional Sums**; OR
- any obstruction, interference or hindrance with the carrying out of the **Works** by the **Owner**, the **Owner's Agent** or any person engaged by the **Owner** to perform other work on the **Land**; OR
- any delay in the **Owner** obtaining or continuing to obtain the **Land Owner's Consent** (if required) under Clause 7.1 for the **Builder** to carry out the **Works** on the **Land**; OR
- any delay or refusal of any authority to grant or issue any necessary permit; OR
- any other cause beyond the reasonable control of the **Builder** including any act or omission by any person engaged by the **Owner** relating to the **Works**;

THEN

in any such case, the **Builder** will within a reasonable time advise the **Owner** of the cause and the reasonable estimated length of the delay and the **Builder** will be entitled to a fair and reasonable extension of time for **Completion** of the **Works**;

AND/OR

the **Builder** may, within fourteen days (14) **Days** of becoming aware that **Completion** of the **Works** will be delayed, notify the **Owner** in writing of the delay stating the cause and the reasonable estimated length of the delay.

15.2 Completion date deemed to be extended if owner fails to reject or dispute builder's claim

If the **Owner** does not notify the **Builder** in writing and reject or dispute the cause of the delay and/or the estimated length of the delay within fourteen (14) **Days** after receipt of the **Builder's** notice under Clause 15.1, the **Completion Date** under the **Contract** will be automatically extended by the delay period stated in the said notice, and at **Completion** the **Owner** is not entitled to deduct any monies from the **Final Payment** for any **Liquidated Damages** for the extent of that delay.



Owner(s) Initials

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15.3 If owner rejects or disputes builder's claim builder still entitled to a fair and reasonable extension of time

If the **Owner** serves a written notice upon the **Builder** disputing or rejecting the estimated length of the delay stated in the **Builder's** notice, the **Builder** is still entitled to a fair and reasonable extension of time for **Completion** of the **Works**.

15.4 Costs of delays attributable to the Owner

Whenever the progress of the **Works** is delayed by any act or omission of the **Owner** or of any person or persons for whom the **Owner** is responsible [including, without limitation, the owner's partners, officers, contractors, suppliers, agents, employees, consultants, related persons and related entities] the **Builder** is, in addition to the appropriate extension of time, entitled to recover the amount included in item 17a of the **Appendix** in respect of each week of delay, or one seventh (1/7th) of said amount for each day of delay.

Clause 15.4 is a **cost escalation clause** to which Section 15 of the **Act** applies. The **Owner** acknowledges receipt of the warning given by the **Builder** explaining the effects of this clause

*

Signature/s of Owner/s

16. SUSPENSION OF THE WORKS

16.1 Builder's entitlement to suspend the works

The **Builder** may, without prejudice to any of the **Builder's** rights under this **Contract** or at law, suspend the obligation of the **Builder** to carry out the **Works** if the **Owner**:

- fails to produce to the **Builder** satisfactory written evidence of title in accordance with Clause 7.1; OR
- revokes the contractual licence provided to the **Builder** under Clause 7.2 or, if required under Clause 7.1, fails to obtain or continue to obtain the **Land Owner's Consent**; OR
- fails to produce to the **Builder** written or other reasonable evidence of capacity to pay the **Contract Price** as required by Clause 11.1 or, if requested under Clauses 11.2 or 11.3; OR
- indicates to the **Builder** that the **Owner** is unable or unwilling to make any payment required under this **Contract**; OR
- is late in making any payment to the **Builder** (including the **Deposit**) as required by this **Contract**; OR
- fails to comply with this **Contract**, including failing to provide to the **Builder** any information requested by the **Builder** under Clause 9.2 relating to **Prime Cost Items** or **Provisional Sums**; OR
- takes **Possession** of any part of the **Works** without the prior written consent of the **Builder** prior to making the **Final Payment**; OR

- obstructs, interferes with or hinders the carrying out of the **Works**, including giving any directions to the **Builder's** workers or sub-contractors or failing to supply any **Materials** or provide information required to be supplied or given to the **Builder** under this **Contract** or refusing to consent to any reasonable or necessary variation requested by the **Builder** under Clause 13: OR
- refuses reasonable access to the **Land** to the **Builder** or to the **Builder's** workers or sub-contractors.

16.2 Written notice required by builder to suspend the works and to extend completion date.

For the **Builder** to suspend the carrying out of the **Works**, the **Builder** must immediately notify the **Owner** in writing of the suspension and the reason for doing so. The **Completion Date** will then be automatically extended by the period equivalent to the sum of the number of **Days** the **Works** were suspended and the number of **Days** of any consequential delays.

16.3 Owner will remedy breach within 7 Days

The **Owner** will remedy the breach or breaches stated in any suspension notice given to the **Owner** in accordance with clause 16.2 within seven (7) **Days** after receiving written notice from the **Builder**.

16.4 Builder will recommence the works within 14 Days of owner remedying breach

The **Builder** will recommence the carrying out of the **Works** within fourteen (14) **Days** of the breach or breaches stated in the suspension notice being remedied by the **Owner**.

17. OBLIGATIONS OF BOTH PARTIES UPON COMPLETION

17.1 Submission of final claim and notice of completion by builder

On **Completion**, the **Builder** will give to the **Owner**:

- the **Final Claim**; AND
- if a building permit was issued for the **Works** a copy of the **Occupancy Permit**, if required, or in any other case a copy of the certificate of final inspection, if required, AND
- a written notice:
 - (i) stating that the **Works** are complete and the date on which the **Works** reached **Completion**; AND
 - (ii) requesting a final inspection of the **Works** with the **Owner** or the **Owner's Agent** at a date and time specified in the notice.

17.2 Owner will notify builder if unable to attend final inspection

If the **Owner** or the **Owner's Agent** is unable to attend the final inspection of the **Works** at the date and time specified in the **Builder's** notice given under clause 17.1, **THEN** the **Owner** will:

- immediately notify the **Builder** in writing of the **Owner's** or the **Owner's Agents** unavailability to attend that inspection prior to the date of the **Builder's** proposed inspection; AND



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

- arrange with the **Builder** an inspection of the **Works** at a mutually agreeable time during normal business hours and on a date which must not be later than seven (7) **Days** from the **Builder's** proposed date for final inspection;

BUT if the **Owner** does not do so then the **Owner** will be taken to be available to attend the final inspection at the date and time stated by the **Builder's** notice given under clause 17.1.

17.3 If owner fails to attend final inspection final claim due and payable

If the **Owner** or the **Owner's Agent** does not attend the arranged final inspection of the **Works** with the **Builder**, then by failing to attend the **Owner** agrees that:

- the **Works** will be taken to have reached **Completion**; **AND**
- the **Final Claim** submitted by the **Builder** shall be payable in accordance with Item 13 of the **Appendix**.

17.4 If owner agrees works are complete final claim becomes due and payable

If at the final inspection of the **Works** the **Owner** agrees that no defects exist and the **Works** have reached **Completion**, then the **Owner** must:

- sign a notice to that effect; **AND**
- pay the **Final Claim** to the **Builder** in accordance with Item 13 of the **Appendix**.

17.5 Owner to provide signed defects list to builder in certain circumstances

If at the final inspection of the **Works** the **Owner** claims any defects exist, or the **Works** are in any way incomplete or not in accordance with the **Plans** or **Specifications**, then the **Owner** must at that inspection give to the **Builder** a written list specifying such items and both the **Builder** and the **Owner** will sign this list and each will retain a copy. Notwithstanding the fact that the **Builder** signs the list provided by the **Owner**, the **Builder's** signature is not an admission that the alleged defects or incomplete items exist in the **Works**.

17.6 Builder will complete the works within 21 days of receipt of a signed defects list

The **Builder** will complete any necessary outstanding items listed on the signed defects list as required by this **Contract** within twenty-one (21) **Days** or if any necessary **Materials** are unavailable, within a reasonable period after receiving a signed defects list under Clause 17.5.

17.7 Final claim payable by Owner upon completion of items by Builder

Upon completion of all necessary outstanding items stated in the defects list given under Clause 17.5 the **Owner** will pay the **Final Claim** to the **Builder** in accordance with Item 13 of the **Appendix**.

17.8 Owner's entitlement to keys and possession of the works

The **Owner** will not take **Possession** of the **Works** or any portion of the **Works** and will not be entitled to the keys to the **Works** prior to payment to the **Builder** of the **Final Claim**;

UNLESS

- the **Owner** has obtained the **Builder's** written consent to take **Possession**; **OR**
- is otherwise entitled to do so under this **Contract** or at law.

17.9 If Owner takes possession of the Works when not entitled to do so Owner is liable to Builder for any loss or damage suffered

If the **Owner** takes **Possession** of the **Works** or any portion of the **Works** when not entitled to do so under this **Contract** or at law, the **Owner** will be liable to the **Builder** for any loss or damage resulting therefrom.

17.10 Builder to hand over keys upon payment of all monies under the Contract

On payment by the **Owner** of the **Final Claim**, the **Builder** will provide all keys to the **Land** and the **Works** to the **Owner** or the **Owner's Agent**.

17.11 Owner's obligation upon taking possession of the works

Upon the **Owner** taking **Possession** of the **Works**, the **Owner** will maintain the **Works** in a good, fit and proper condition for the duration that the **Owner** remains in **Possession** of the **Works** for a period not exceeding ten (10) years.

17.12 Land to be in a neat and tidy condition before builder submits final claim

The **Builder** will, before submitting the **Final Claim** to the **Owner**, ensure that the **Land** and the **Works** are in a reasonably neat and tidy condition.

18. LIQUIDATED DAMAGES

18.1 Owner's entitlement to liquidated damages

If the **Builder** fails to bring the **Works** to **Completion** by the **Completion Date**, the **Builder** will pay or allow to the **Owner** by way of pre-estimated and **Liquidated Damages**, a sum calculated at the rate stated in Item 17 of the **Appendix** for the period from the **Completion Date** until the **Works** reach **Completion** or until the **Owner** takes **Possession**, whichever is earlier.

18.2 Liquidated damages may only be deducted from final payment

The amount of any **Liquidated Damages** may be deducted by the **Owner** from the **Final Payment** only and any deficiency may be recovered by the **Owner** as a debt due to the **Owner** by the **Builder**.

19. DEFECTS LIABILITY PERIOD

19.1 Defects liability period may be provided by the builder

If the **Builder** provides to the **Owner** a **Defects Liability Period** as stated in Item 14 of the **Appendix**, then that period will commence upon **Completion** of the **Works** or upon the **Owner** taking **Possession** of the **Works**, whichever is earlier.

General Conditions

General Conditions



Owner(s) Initials /

Builder's Initials.....



Owner(s) Initials /

Builder's Initials.....

General Conditions

General Conditions

19.2 Owner may provide defects list prior to expiry of defects liability period

After **Completion** and prior to the expiration of the **Defects Liability Period**, the **Owner** may provide to the **Builder** a written list of any alleged defects arising out of **Builder's** defective workmanship or **Materials** supplied by the **Builder** under this **Contract**.

19.3 Builder will rectify defects on expiry of defects liability period

Subject to reasonable access to the **Land** being provided by the **Owner**, the **Builder** will within twenty-eight (28) **Days** of the expiry of the **Defects Liability Period**, make good and rectify any necessary defects as required by this **Contract**, notified to the **Builder** under Clause 19.2, during usual business hours and at no cost to the **Owner**. The **Builder** will not, however, have the responsibility to rectify any alleged defective items which arise from the fact that something is still to be supplied or done by the **Owner** or relating to any maintenance of an item which is to be performed by the **Owner** or is the responsibility of the **Owner**.

19.4 If owner denies builder opportunity to rectify builder's liability reduced

If the **Owner** without reasonable cause does not allow the **Builder** the opportunity to return to the **Land** to make good and rectify any defects or does not provide reasonable access to the **Builder** to allow the **Builder** to do so, the **Builder** will only be liable to the **Owner** for the cost which the **Builder** would have incurred had the **Builder** been permitted to rectify the defect.

19.5 If builder fails to rectify owner may engage others and recover cost from builder

Subject to Clause 19.4, if the **Builder** fails to make good and rectify any defects within twenty-eight (28) **Days** of expiry of the **Defects Liability Period** without reasonable excuse, the **Owner** may then engage or employ others to make good such defects or faults to the extent that the **Builder** has failed to do so and recover from the **Builder** the reasonable cost of doing so.

20. OWNER'S RIGHTS TO TERMINATE CONTRACT

20.1 Owner's right to serve notice of intention to terminate contract

If the **Builder**:

- fails to produce to the **Owner** a copy of the relevant insurance policy or certificate of currency setting out details of the required insurance under the Building Act 1993, as required by Clause 5; OR
- fails to proceed with the **Works** with due diligence or in a competent manner; OR
- unreasonably suspends the carrying out of the **Works**; OR
- refuses or persistently neglects to remove or remedy defective work or improper **Materials**, so that by the refusal or persistent neglect the **Works** are adversely affected; OR
- refuses or persistently neglects to comply with this **Contract** (including the requirements of municipal or other authorities); OR
- is unable or unwilling to complete the **Works** or abandons the **Contract**; OR
- is in substantial breach of this **Contract**;

THEN

the **Owner** may give written notice by registered post to the **Builder**:

- describing the breach or breaches of the **Contract** by the **Builder**; AND
- stating the **Owner's** intention to terminate the **Contract** unless the **Builder** remedies the breach or breaches of this **Contract** within a period of fourteen (14) **Days** after the **Builder's** receipt of the above notice.

20.2 If builder fails to remedy breach owner may terminate contract

If the **Builder** fails to remedy the breach or breaches of this **Contract** as stated in any notice served by the **Owner** under Clause 20.1 THEN the **Owner** may, without prejudice to any other rights or remedies, give further written notice by registered post to the **Builder** immediately terminating this **Contract**.

20.3 Owner may not terminate contract in certain circumstances

The **Owner** may not terminate this **Contract** unreasonably or vexatiously or if the **Owner** is in substantial breach of this **Contract**.

20.4 Owner's right to engage another builder to complete the works

If the **Owner** terminates this **Contract** in accordance with this Clause 20, the **Owner** may then engage another builder to complete the **Works**; and:

- if the reasonable cost to complete the **Works** exceeds the unpaid balance of the **Contract Price**, then the excess amount shall be a debt due and payable by the **Builder** to the **Owner**; OR
- if the reasonable cost to complete the **Works** is less than the unpaid balance of the **Contract Price**, then the remaining amount of the unpaid balance shall be a debt due and payable by the **Owner** to the **Builder**.

21. OWNER'S STATUTORY RIGHTS TO TERMINATE CONTRACT

21.1 Owner's right to terminate the contract if completion time or cost blows out for unforeseeable reasons

The **Owner** may terminate this **Contract** in accordance with Section 41 of the **Act** if either:

- the **Contract Price** increases by 15% or more after the **Contract** was entered into; OR
- the **Works** have not been completed within one-and-a-half (1½) times the period it was to have been completed; AND
- the reason for the increased time or cost was something that could not have been reasonably foreseen by the **Builder** on the date this **Contract** was made.

21.2 Certain increases in time and cost to be ignored

For the purposes of Clause 21.1 and Section 41 (1) of the **Act**, any increased time or cost that arises as a result of a **Prime Cost Item** or a **Provisional Sum** or that is caused by a variation requested by the **Owner** is to be ignored in calculating any price rise or increase in time.



Owner(s) Initials /

Builder's Initials



Owner(s) Initials /

Builder's Initials

General Conditions

General Conditions

21.3 Owner to give written notice to terminate contract

To end this **Contract** the **Owner** must give to the **Builder** a signed written notice in the approved form (if any) under the **Act** stating that the **Owner** is ending the **Contract** under Section 41 of the **Act** and giving details of why the **Contract** is being ended.

21.4 Builder entitled to reasonable price if contract ended

If the **Contract** is ended under Section 41 of the **Act** the **Builder** is entitled to a reasonable price for the **Works** carried out under the **Contract** to the date the **Contract** is ended.

22. BUILDER'S RIGHTS TO TERMINATE CONTRACT

22.1 Builder's right to serve notice of intention to terminate contract

If the **Owner**:

- refuses or persistently neglects to comply with this **Contract**, including failing to provide to the **Builder** any information requested by the **Builder** under Clause 9.2 relating to **Prime Cost Items** or **Provisional Sums**; OR
- indicates to the **Builder** that the **Owner** is unable or unwilling to make any payment required under this **Contract**; OR
- fails to remedy any breach specified in a suspension notice served on the **Owner** by the **Builder** under Clause 16.2, within seven (7) Days of receipt of that notice; OR
- fails to produce to the **Builder** satisfactory or written evidence of title in accordance with Clause 7.1; OR
- revokes the contractual licence provided to the **Builder** under Clause 7.2 or, if required under Clause 7.1, fails to obtain or continue to obtain the **Land Owner's Consent**; OR
- fails to produce to the **Builder** written or other reasonable evidence of capacity to pay the **Contract Price** as required by Clause 11.1 or, if requested under Clause 11.2 or 11.3; OR
- is late in making any payment to the **Builder** (including the **Deposit**) as required by this **Contract**; OR
- takes **Possession** of any part of the **Works** without the prior written consent of the **Builder** prior to making the **Final Payment**; OR
- obstructs, interferes with, or hinders the carrying out of the **Works**, including giving any directions to the **Builder's** workers or sub-contractors or failing to supply any **Materials** or provide information required to be supplied or given to the **Builder** under this **Contract** or refusing to consent to any reasonable or necessary Variation requested by the **Builder** under Clause 13; OR
- refuses reasonable access to the **Land** to the **Builder** or to the **Builder's** workers or sub-contractors; OR
- is in substantial breach of this **Contract**

THEN the **Builder** may give written notice by registered post to the **Owner**:

- describing the breach or breaches of the **Contract** by the **Owner**; AND
- stating the **Builder's** intention to terminate the **Contract** unless the **Owner** remedies the breach or breaches within fourteen (14) **Days** after the **Owner's** receipt of the above notice.

22.2 If owner fails to remedy breach builder may terminate contract

If the **Owner** fails to remedy the **Owner's** breach or breaches of this **Contract** as stated in the above notice within fourteen (14) **Days** of the **Owner's** receipt of the notice THEN the **Builder** may, without prejudice to any other of the **Builder's** rights or remedies, give further written notice by registered post to the **Owner** immediately terminating this **Contract**.

22.3 Builder may not terminate contract in certain circumstances

The **Builder** may not terminate this **Contract** unreasonably or vexatiously or if the **Builder** is in substantial breach of this **Contract**.

22.4 Builder's right to recover all loss, expenses etc. upon termination

If the **Builder** terminates this **Contract** in accordance with this Clause 22, the **Builder** will be entitled to recover from the **Owner** all loss, expense and damage caused to the **Builder** resulting therefrom as if the **Owner** had wrongfully repudiated this **Contract**.

23. RIGHTS OF EITHER PARTY TO TERMINATE THE CONTRACT FOR OTHERS BANKRUPTCY OR LIQUIDATION ETC.

23.1 Either party may terminate contract for others bankruptcy or liquidation

Either the **Builder** or the **Owner** may terminate this **Contract** immediately by giving written notice by registered post to the other party if the other party becomes insolvent or financially unable to proceed with the **Contract**, or if a party is a natural person or a partnership including a natural person and becomes bankrupt or makes a proposal for a scheme of arrangement or a composition or has a deed of assignment or deed of arrangement made or accepts a composition or is required to present a debtor's petition or has a sequestration order made, or if a party being a corporation enters into a deed of company arrangement with creditors or has a controller or administrator appointed or a winding up order is made or it resolves by special resolution that it be wound up voluntarily (other than for the purposes of reconstruction).

23.2 Written notice required to be served

If either the **Builder** or the **Owner** serves on the other a written notice pursuant to Clause 23.1 terminating this **Contract**, the notice must state the reason or reasons for the termination relied upon by that party.



Owner(s) Initials..... /

Builder's Initials.....



Owner(s) Initials..... /

Builder's Initials.....

General Conditions

General Conditions

24. SERVICE OF NOTICES

24.1 Copies of notices to be provided by one party to the other

Both the **Builder** and the **Owner** agree to provide to the other a copy of any report, notice, or order given in relation to the **Works** being carried out by the **Builder** by any public statutory authority, provider of services such as gas, electricity, telephone, water and sewerage or any person registered under the Building Act 1993 as soon as practicable after receiving the report, notice, order or document.

24.2 Methods of service for notices and other documents

Unless otherwise stated in this **Contract**, any written notice, report, order or other document required by this **Contract** or by the **Act** to be given by the **Builder** to the **Owner** or by the **Owner** to the **Builder** may be given or served upon the other by any of the following methods:

- by hand to the person to whom it is required to be given; OR
- by pre-paid post or registered post to the address of the person to whom it is required to be given, as stated in the **Appendix**; OR
- by facsimile to the facsimile number (if any) stated in the **Appendix**.

24.3 When notices are deemed to have been served

In the case of any notice, report, order or other document being given or served;

- by hand it will be deemed to have been received and served upon by the addressee on the date of actual delivery; OR
- by registered post it will be deemed to have been received by and served upon the addressee on the date of actual receipt, or two (2) clear **Business Days** after the day of posting, whichever is earlier; OR
- by pre-paid post it will be deemed to have been received by and served upon the addressee two (2) clear **Business Days** after the day of posting; OR
- by facsimile transmission it will be deemed to have been received by and served upon the addressee on the date of transmission if confirmation of correct transmission can be produced by the person who sent it.

NOTE

Where notices are served under this **Contract** copies of all relevant notices and documents should be kept for record purposes.

25. MISCELLANEOUS

25.1 Unfixed and demolished materials

All unfixed building **Materials** supplied by the **Builder** and not paid for by the **Owner** and all demolished materials shall be the property of the **Builder**, unless otherwise stated in this **Contract**.

25.2 All dimensions are metric unless otherwise specified

All dimensions in this **Contract** are metric unless otherwise specified. The **Builder** reserves the right to substitute approximate imperial equivalents if appropriate having regard to the dimensions of any **Existing Building** or the general availability of **Materials** in the metric equivalents.

25.3 No adjustment to contract price for different dimensions

All dimensions in this **Contract** are approximate to the extent that they are based on dimensions estimated from any **Existing Building**. The **Contract Price** shall not be adjusted if actual dimensions vary from estimated dimensions.

25.4 Builder's right to subcontract

The **Builder** may at all times sub-contract any part of the **Works**, but this will not relieve the **Builder** from any obligation or liability under this **Contract** or the **Act**.

25.5 Parties rights to assign contract

Neither party shall assign this **Contract** or any payment or any other right, benefit or interest under this **Contract** without the written approval of the other party, which shall not be unreasonably withheld.

25.6 Copyright

If the **Builder** carries out the **Works** in accordance with the **Plans** which incorporated designs which were:

- prepared under instruction, supervision or direction from the **Owner**; OR
- supplied by the **Owner**; OR
- prepared from sketches supplied by the **Owner**;

THEN

(i) The **Owner** warrants that the **Owner** has the right to use the design and the **Plans** provided to the **Builder** and there is no breach of copyright involved in constructing the **Works** in accordance with the **Plans**;

AND

(ii) the **Owner** indemnifies the **Builder** against all actions, proceedings, claims and demands for and in respect of any actual or alleged infringement of copyright by the **Builder** as a result of the **Builder's** preparation of the **Plans** and/or the carrying out of the **Works** by the **Builder**.

Copyright includes all Moral Rights pursuant to Part IX of the Copyright Act 1968.



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

25.7 **Governing Laws**

This **Contract** will in all respects be governed by and construed in accordance with the laws that apply in the State of Victoria.

25.8 **Severance**

If any provision of this **Contract** is void, voidable by either party, unenforceable or illegal, it is to be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words) is to be severed from this **Contract** without thereby affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this **Contract**, which will continue in full force and effect.

25.9 **Joint and several liability**

If there is more than one person named as **Owner** under this **Contract**, the **Owners'** obligations shall be joint and several at all times.

25.10 **Owner's Agent**

With the written consent of the **Builder**, which shall not be unreasonably withheld, the **Owner** may appoint an **Owner's Agent** to act on the **Owner's** behalf in the administration of this or any part of this **Contract**, but must authorise the **Owner's Agent** to so act in writing.

25.11 **Acts of Owner's Agent deemed to be those of the Owner**

Any act or omission by the **Owner's Agent** shall be deemed to be an act or omission of the **Owner** under this **Contract**.

26. **RESOLUTION OF DISPUTES**

26.1 **Unsettled disputes may be referred VCAT**

If any dispute between the **Owner** and the **Builder** in connection with this **Contract** cannot be resolved by informal agreement either party may make application to the Victorian Civil and Administrative Tribunal ("VCAT") which is located at 55 King Street, Melbourne and which may be contacted by telephone on (03) 9628 9999.



Owner(s) Initials

Builder's Initials.....

27. **GST**

(a) In this clause "**GST**", "**GST exclusive value**", "**GST registered**", "**tax invoice**", "**taxable supply**" have the meanings assigned to them by the *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and regulations.

(b) *Unless expressly indicated otherwise* all money sums stated, referred to or implied in this **Contract** - whether expressed as *amount, sum, payment, price, cost, loss, deposit, claim, damages, premium, profit, overheads, indemnity, interest, funds, expense, remuneration, refund, reimbursement, value*, or any other relevant expression - are **GST exclusive values**.

■ For the above purposes, the following sums are expressively GST- inclusive values:

- The amounts set out in this contract in respect of
 - **Progress Payments;**
 - **The Contract Price;**
 - **The Deposit;**
 - **Liquidated Damages.**
- The amounts stated on **Progress** and **Final Payment Claims** and certificates;
- The amounts paid, or to be paid, or to be paid, by way of progress and final payments;
- **Prime Cost Items** and **Provisional Sums** set out in the **Contract**;
- Variation prices;
- Retentions and Bank Guarantees

(c) A party who receives, pursuant to arising from or in connection with this **Contract**, a **taxable supply** from the other party in consideration for any of the money sums referred to in (b) above must, in addition to that money sum, also pay to the other party, at the same time and in the same manner, the **GST** applicable to that payment.

(d) The guarantor/s of a party must, in addition to all money sums that are or become payable by them pursuant to arising from or in connection with this **Contract** or the Guarantee Agreement, also pay to the other Party, at the same time and in the same manner, the **GST** applicable to that payment.

In certain circumstances Clause 27 can have the effect of a **cost escalation clause** to which section 15 of the **Act** applies. The **Owner** acknowledges receipt of the warning given by the **Builder** explaining the effects of this clause.

*
Signature/s of Owner/s



Owner(s) Initials

Builder's Initials.....

SECTION B - SPECIAL CONDITIONS

Any Special Conditions should be numbered in order
e.g. SC1, SC2, SC3, etc.

SC1 - _____

Special
Conditions



Owner(s) Initials / Builder's Initials.....

APPENDIX

Item No.

1. OWNER

Name(s):

ABN: (if applicable):

ACN: (if applicable):

Address:

Telephone No.: (H) (B)
(Fax) (Mbl)

2. BUILDER

Name:

(Company/Registered Business Name/Individual Trader)

ABN: (if applicable):

ACN: (if applicable):

Address:

Telephone No.: (B) (H)
(Fax) (Mbl)

Registered Building Practitioner No.:

MBAV Membership No.: (E-MAIL).....

3. WARRANTY INSURANCE

Domestic Building Insurance Policy Type: Job Specific / Annual Warranty
(Delete as applicable)

Policy No. (if known):

Name and Address of Insurer:

(if not known, to be provided pursuant to Clause 5,4)

4. LAND ON WHICH THE WORKS WILL BE PERFORMED

Land Address:

..... Lot No.

Title Particulars: Volume No. Folio No.

Plan of Subdivision No.:

Name(s) of registered Land Owner(s)

Lending Authority (if applicable)

Appendix



Owner(s) Initials / Builder's Initials.....

Item No.

5. DESCRIPTION OF MAJOR DOMESTIC BUILDING WORK

(ie WORK VALUED IN EXCESS OF \$5,000)

Description:

6. SPECIFICATIONS

Title (if any)
No. of Pages:
Date:
Prepared by:
Supplied by:
Other description (if any)

The Standards and Tolerances Guide produced by the Building Commission as applicable at the date of this Contract forms part of the Specifications.

NOTE: Each party should sign each page of the Specifications

7. PLANS

Title and/or Drawing No's
No. of Pages:
Date:
Prepared by:
Supplied by:

NOTE: Each party should sign all Plans

8. DETAILS OF OTHER DOCUMENTATION, eg ENGINEER'S COMPUTATIONS:

Title:
No. of Pages:
Date:
Prepared by:
Supplied by:

NOTE: Each party should sign each page of these other documents



Owner(s) Initials

Builder's Initials

Item No.

9. CONSTRUCTION PERIOD

NOTE: The Builder should not under any circumstances commence to carry out any of the Works before the expiry of the Cooling Off Period or before being given copy of a valid and current Building Permit (and, if applicable, Planning Permit) relating to the Works.

9.1 Anticipated Commencement Date (optional)
(Clause 8.1)

NOTE: A specific starting date generally should only be specified if all permits have already been obtained and issued prior to the date of the Contract and all other items listed in (ii) in Clause 8.1 have been or are expected to be received by the Builder prior to the anticipated Commencement Date. If no date is specified above, then the Commencement Date shall be determined under Clause 8.1.

OR as otherwise determined under Clause 8.1 of this Contract

9.2 Construction Period

The Builder has made the following reasonable allowances in calculating the Construction Period at Item K. herein, which are as follows:

Item No.

Table with 3 columns: Item No., CONSTRUCTION PERIOD, CALENDAR DAYS. Rows A-H detailing various delay allowances.

Summary rows I and J for total delay and allowance for actual construction period.

Row K: TOTAL CONSTRUCTION PERIOD INCLUDING DELAY DAYS

NOTE: Days means calendar days



Owner(s) Initials

Builder's Initials

Appendix

Appendix

9.3 DETAILED DESCRIPTION OF ANY NON DOMESTIC BUILDING WORK TO BE CARRIED OUT UNDER THIS CONTRACT (if any); e.g. work in relation to a farm building or to accommodate animals or work solely for business purposes.

Description

.....

.....

Amount **Builder** is to receive for this work including GST \$

10. THE CONTRACT PRICE

10.1 The Contract Price includes GST and is:

.....dollars (in words)
 (refer to Clause 11.5) \$ (in figures)

10.2 The Deposit includes GST and is

.....dollars (in words)
 \$ (in figures)
 (being % of the Contract Price)
 (refer to Clause 11.6)

WARNING: Changes to the Price

The Price of this **Contract** is not fixed, but may be altered as a result of:

- the actual cost of **Prime Cost Items** and work for which **Provisional Sums** have been specified exceeding the estimates set out in the **Contract** [Refer Clause 9]
- variations, including those required by a building surveyor or any authorised person under the Building Act 1993 [Refer Clauses 12 and 13]
- interest on overdue payments [Refer Clause 11.10]
- surveying the land if required [Refer Clause 7.8]
- any additional amounts payable for excavations or footings [Refer Clause 14]
- any order made by the Victorian Civil and Administrative Tribunal or other Court or Tribunal of competent jurisdiction
- costs of delays attributable to the **Owner** [Refer Clause 15.4]
- GST [Refer Clause 27]
- **Ensure that you fully understand how the clauses dealing with these matters affect the Contract Price.**



Owner(s) Initials

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11. SERVICES AND FEES THAT MAY OR MAY NOT BE INCLUDED IN THE CONTRACT PRICE

11.1 Where the conveying, connection or installation of services and facilities are not included in the **Contract Price**, the **Owner** must pay for those services or facilities to be brought to the **Land** and connected to the **Works** and the **Builder** must provide an estimate of that cost.

SERVICES AND FACILITIES

Description of Service	Included in Contract Price	Not Included in Contract Price	If service not included in the Contract Price , estimated cost of Conveyancing, Connecting or Issuing Facility or Service to be paid to a third person by the Owner
Gas	<input type="checkbox"/>	<input type="checkbox"/>	
Sewerage	<input type="checkbox"/>	<input type="checkbox"/>	
Storm Water	<input type="checkbox"/>	<input type="checkbox"/>	
Water	<input type="checkbox"/>	<input type="checkbox"/>	
Electricity	<input type="checkbox"/>	<input type="checkbox"/>	
Telephone	<input type="checkbox"/>	<input type="checkbox"/>	
Other Services (Describe service)			
(i)	<input type="checkbox"/>	<input type="checkbox"/>	
(ii)	<input type="checkbox"/>	<input type="checkbox"/>	

11.2 In relation to the services and facilities that are included in the **Contract Price**, the **Owner** must pay for the fees which have been excluded from the **Contract Price** in the table below and the **Builder** must provide an estimate of those fees.

EXCLUDED SERVICE FEES

Description of fees excluded from the Contract Price eg contribution or final connection fees for supply of gas/electricity	Description of service or service provider	Estimate of excluded fees

11.3 PLANNING AND BUILDING PERMITS

- Planning permit shall be obtained and paid by (tick one box only):
 (if no box is ticked, then the **Owner** is responsible)
 - Builder**
 - Owner** - Estimated fees to obtain is \$
 - Not required/already obtained
- Building permit shall be obtained and paid by (tick one box only):
 (if no box is ticked, then the **Owner** is responsible)
 - Builder**
 - Owner** - Estimated fees to obtain is \$
 - Not required/already obtained



Owner(s) Initials

Builder's Initials

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- 12. Period for payment of **Progress Claims** (excluding **Final Payment**) **Days**
(Clause 11.9) (if nothing stated, 7 Days)
- 13. Period for payment of **Final Claim** **Days after Completion**
(Clauses 17.3, 17.4 & 17.7) (if nothing stated within 7 Days after Completion)
- 14. **Defects Liability Period**
(Clause 19) (if nothing stated, no period)
- 15. **Annual Interest Rate** Applicable to Late Payments %
(Adjusted Weekly Compounding) (if nothing stated, the rate fixed pursuant to Section 2 of the Penalty Interest Rates Act 1983)
(Clause 11.10)
- 16. **Public Liability Insurance** Indemnity Limit \$
(Clause 6.4) (if nothing stated \$5 million)
- 17. Rate for **Liquidated Damages** Per Week - \$
Pro Rata (Clause 18) (if nothing stated, no liquidated damages apply)
- 17a. Rate for **Liquidated Damages** For delays caused by **Owner** (per Week or Pro Rata) \$
(Clause 15.4) (if nothing stated, no liquidated damages apply)

18. FIXTURES AND FITTINGS NOT INCLUDED IN THE CONTRACT PRICE BUT SHOWN ON PLANS AND/OR SPECIFICATIONS

(Strike out table if not applicable)

DETAILS

1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

19. MATERIALS TO BE SUPPLIED BY, OR ITEMS OF WORK TO BE CARRIED OUT BY THE OWNER

(Strike out table if not applicable)

Materials to be supplied by or work to be carried out by the **Owner** are to be stated in this Table. No warranties are given by the **Builder**, either express or implied, as to the suitability or otherwise of those **Materials** or items of work stated in this table (Clause 11.11).

1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

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20. SECOND-HAND MATERIALS TO BE SUPPLIED BY THE BUILDER

(Strike out table if not applicable) (Clause 10.1)

DETAILS

1.	3.
2.	4.

21. PRIME COST ALLOWANCES FOR PRIME COST ITEMS (if applicable)

(These schedules are to be read in conjunction with Clause 9)

*Note: The **Owner** should read the warning notice contained in Clause 9*

	Description Of Each Prime Cost Item	Builder's Supply Allowance Per Item	Quantity Of Components or Materials	Prime Cost Item Allowance	Builder's % Margin On Excess
Example	Basins	\$100 x	4	= \$400	+ 20%
1.		\$		\$	%
2.		\$		\$	%
3.		\$		\$	%
4.		\$		\$	%
5.		\$		\$	%
6.		\$		\$	%
7.		\$		\$	%
8.		\$		\$	%
9.		\$		\$	%
10.		\$		\$	%

*Note: These figures are based on prices obtained from the **Builder's** usual or preferred suppliers, and include the cost of local delivery of that item to the **Land** (Refer to Clause 9.7). The cost for installation, profit and overhead is generally included in the **Contract Price** (Refer to Clause 9.8) unless the amount expended on the **Prime Cost Item** is in excess of the sum allowed for that item.*

Appendix

Appendix



Owner(s) Initials /

Builder's Initials



Owner(s) Initials /

Builder's Initials

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22. PROVISIONAL SUM ALLOWANCES FOR LABOUR COSTS and cost of supplying material needed for the work (if applicable)

(These schedules are to be read in conjunction with Clause 9)

Note: The Owner should read the warning notice contained in Clause 9

	Description of Provisional Sum Item	Estimated Quantity of Components or Materials	Builder's Allowance (Including Labour) for each component or unit of Material	Total Provisional Sum Allowance for Labour & Materials	Builder's % Margin on Excess
Example	Landscaping	Trees X 10	\$50	= \$500	+20%
1.			\$	\$	%
2.			\$	\$	%
3.			\$	\$	%
4.			\$	\$	%
5.			\$	\$	%
6.			\$	\$	%
7.			\$	\$	%
8.			\$	\$	%
9.			\$	\$	%
10.			\$	\$	%

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23. PROGRESS PAYMENT TABLE

(Clause 11.8)

METHOD A

NOTE: Method A is prescribed under Section 40 of the Domestic Building Contracts Act 1995 and is generally used for new homes. If Method A is used the **Builder** must not demand or recover or retain more than the percentage of the **Contract Price** stated for the completion of each **Stage** of the **Works**. Under Method A or B, the maximum deposit is 5% if the **Contract Price** is \$20,000 or greater and 10% if less than \$20,000.

23.1 CHOOSE ONLY ONE OF THE FOLLOWING

TYPE OF CONTRACT (Select one of the following)	% OF CONTRACT PRICE	VALUE (in figures)	PAYMENTS AND STAGES UNDER THE CONTRACT
Contract to build to lock up stage		\$	Deposit (refer to Clause 11.6 and Item 10.2 of the Appendix)
	(20%)	\$	Base Stage
	(25%)	\$	Frame Stage
		\$	Final Payment Upon Completion
	= 100%	\$	Total

Contract to build to fixing stage		\$	Deposit (refer to Clause 11.6 and Item 10.2 of the Appendix)
	(12%)	\$	Base Stage
	(18%)	\$	Frame Stage
	(40%)	\$	Lock up Stage
		\$	Final Payment Upon Completion
= 100%	\$	Total	

Contract to build through to all stages		\$	Deposit (refer to Clause 11.6 and Item 10.2 of the Appendix)
	(10%)	\$	Base Stage
	(15%)	\$	Frame Stage
	(35%)	\$	Lock up Stage
	(25%)	\$	Fixing Stage
		\$	Final Payment Upon Completion
=100%	\$	Total	

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Owner(s) Initials

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Owner(s) Initials

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METHOD B

Item No.

23.2 FORM 2 UNDER REGULATION 6 (b)

Progress Payments

The parties agree:

- (i) that the progress payments fixed by section 40 of the Domestic Building Contracts Act 1995 do not apply; and
- (ii) that instead the percentages of the **Contract Price** and amounts payable are as follows:

Name of Stage	If Stage is NOT the same as a Stage defined in this Contract or Section 40(1) of The Domestic Building Contracts Act 1995, what does this Stage mean?	% OF TOTAL CONTRACT PRICE	AMOUNT (in \$ figures)
	Name of Stage or Description of Stage of Works if different from Method A		
	(Deposit)	%	\$
		%	\$
		%	\$
		%	\$
		%	\$
		%	\$
		%	\$
		%	\$
		%	\$
		%	\$
TOTAL CONTRACT PRICE		100% (including Deposit)	\$

Note: the Total Contract Price must be the same amount as stated Item 10.1 of the Appendix

This Form Must Be Completed If Method B Is Used Under this Contract

SCHEDULE Form 1

Regulation 6(a)

WARNING TO OWNER(S): CHANGE OF LEGAL RIGHTS

Section 40 of the Domestic Building Contracts Act 1995 provides that a builder cannot charge more than a fixed percentage of the total Contract Price at the Completion of each stage of building a home.

The Act also allows the parties to agree in writing to change the Stages and the percentage of the Contract Price to be paid at the Completion of each stage.

There are several ways in which a particular contract can vary from the normal, and it is these exceptional cases which have caused the law to allow for these changes.

Examples would include -

- where it is very expensive to prepare the Land for building, for example, where the site is steep or rocky;
- where the house is so large that it will take a long time to complete, and intermediate progress payments are therefore required;
- where exceptionally expensive finishes are required, meaning that the final stage will represent a much larger proportion of the whole price;
- where an Architect is engaged to independently assess the value of completed work for Progress Payments.

You should not agree to progress payments different from that provided in the Act unless your house is unusual in some way and you are **SURE THAT DIFFERENT PROGRESS PAYMENTS ARE NECESSARY** and you understand clearly why the change is needed in the case of your particular house. If you have any doubts, you could contact:-

Master Builders' Association of Victoria
 Housing Industry Association
 Law Institute of Victoria
 Consumer Affairs Victoria
 Royal Australian Institute of Architects

I/We acknowledge that I/we have read this warning before signing the Contract.

Signature of Building Owner(s)



Owner(s) Initials

Builder's Initials



Owner(s) Initials

Builder's Initials

Appendix

Appendix

NOTICE APPROVED BY THE DIRECTOR OF CONSUMER AFFAIRS VICTORIA PURSUANT TO SECTION 31(1)(r) OF THE DOMESTIC BUILDING CONTRACTS ACT 1995

CHECKLIST

BEFORE SIGNING THIS LEGALLY BINDING CONTRACT CHECK THIS LIST

- Has an insurance policy or certificate of currency for builder's insurance been issued and provided to you? If not, the Contract is conditional upon you receiving either an insurance policy or a certificate of currency for builder's insurance. YES or NO
If the Contract is conditional upon the Owner receiving written approval for finance has the Owner obtained such approval? YES or NO

If you answer "NO" to any of the following questions that appear below you are not ready to sign the Contract:

- Has the Owner had the Contract long enough to read and understand it? YES or NO
Has the Owner been provided with evidence that the Builder named in this Contract registered with the Building Practitioners Board YES or NO
Are the Price and Progress Payments clearly stated YES or NO
Do you Owner understand how the price is calculated and may be varied? YES or NO
Has the Builder assessed the suitability of the site for the proposed works and if tests are necessary have they been carried out before signing the Contract? YES or NO
If a Deposit is payable, is it within the legal limit? The maximum under the Domestic Building Contracts Act 1995 is: (i) 10% if the Price is less than \$20,000 or; (ii) 5% if the Price is \$20,000 or more YES or NO
Is the work shown and described clearly in the Contract, Plans or Specifications and any other relevant documents such as engineering computations or soil report? YES or NO
Are the Owner's special requirements or finishes included in the Plans or Specifications? YES or NO
Is the commencement date and Completion Date clearly stated or capable of being ascertained? YES or NO
Is the procedure for extensions of time understood? YES or NO
Are any Provisional Sums or Prime Cost Items clearly stated in the schedules and understood? YES or NO
Is the procedure for variations of Plans or Specifications understood? YES or NO
Do you understand the circumstances in which you can end the Contract? YES or NO

NOTE: This checklist does not form part of the Contract.

Read, signed and dated by the Owner/s: _____

Date: / / 20



Owner(s) Initials /

Builder's Initials

INSTRUMENT OF AGREEMENT

Signing Page

The Builder and the Owner agree that the Builder will carry out and complete the Works and the Owner will pay the Contract Price to the Builder in accordance with the terms and conditions of this Contract.

BUILDER

Signed by or for and on behalf of the Builder:

(Name)

(Signature)

OWNER

Signed by or for and on behalf of the Owner(s):

(Name) (Name)

(Signature) (Signature)

DATE

Dated this day of 2

Instrument of Agreement



Owner(s) Initials /

Builder's Initials

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DEED OF GUARANTEE AND INDEMNITY

*Note: If the **Owner** is a company then all Directors of the company must execute this guarantee and indemnity.*

I/We the Guarantors stated below requested the **Builder** to enter into the **Contract** with the **Owner**, and the **Builder** has done so for the **Contract Price** and upon the terms and conditions as stated in the **Contract**.

I/We the Guarantors hereby for ourselves, our respective executors and administrators JOINTLY AND SEVERALLY COVENANT with the **Builder** as follows:

If at any time:

- the **Owner** is late in making any payment to the **Builder** in accordance with the **Contract**;

OR

- the **Owner** fails to observe and perform any other of its obligations contained in any term or condition of the **Contract**;

THEN

I/We will immediately upon demand by the **Builder** make payment to the **Builder** of any monies which are due and payable by the **Owner**;

AND

I/We will keep the **Builder** indemnified against all loss of money payable under the **Contract** and for all losses, costs and expenses whatsoever the **Builder** may suffer by reason of any default by the **Owner**.

This guarantee and indemnity is a continuing guarantee and indemnity and will remain in full force and effect until legally discharged and will not be released by any of the following:

- any delay, neglect or forbearance on the part of the **Builder** in enforcing its rights against the **Owner** under the **Contract**; OR
- any action by the **Builder** against the **Owner** to enforce any of the **Builders** rights under the **Contract**; OR
- variations made to the **Contract** by agreement between the **Owner** and the **Builder**, including any variations which increase the liability of the **Owner** to the **Builder** under the **Contract**; OR
- the **Owner** being financially unable to proceed with the **Contract**, becoming insolvent, being declared bankrupt, making a proposal for a scheme of arrangement or a composition, entering into a deed of company arrangement with creditors or having a controller or administrator appointed or being wound up; OR
- any part of this guarantee or indemnity or the **Contract** being void, voidable, unenforceable or illegal.

Where this guarantee and indemnity is given by more than one person, it binds them jointly and each of them individually.

Guarantee and Indemnity



Owner(s) Initials /

Builder's Initials



Owner(s) Initials /

Builder's Initials

For execution by guarantor No. 1

SIGNED, SEALED AND DELIVERED AS A DEED BY

.....
 (name of guarantor No. 1) (signature of guarantor No. 1)

as guarantor in the presence of:

.....
 (name of witness) (signature of witness)

on this..... day of..... 20.....

For execution by guarantor No. 2

SIGNED, SEALED AND DELIVERED AS A DEED BY

.....
 (name of guarantor No. 2) (signature of guarantor No. 2)

as guarantor in the presence of:

.....
 (name of witness) (signature of witness)

on this..... day of..... 20.....

For execution by guarantor No. 3

SIGNED, SEALED AND DELIVERED AS A DEED BY

.....
 (name of guarantor No. 3) (signature of guarantor No. 3)

as guarantor in the presence of:

.....
 (name of witness) (signature of witness)

on this..... day of..... 20.....

Guarantee and Indemnity

WARNING - THIS IS THE SIGNING PAGE FOR THE "DEED OF GUARANTEE AND INDEMNITY", TO BE SIGNED BY THE GUARANTORS/S. IT IS NOT THE SIGNING PAGE FOR THE CONTRACT. ALL PARTIES TO THE CONTRACT (THE OWNER/S AND THE BUILDER) MUST SIGN THE "INSTRUMENT OF AGREEMENT" ON PAGE 45.



Owner(s) Initials

Builder's Initials.....

NOTE TO BUILDERS

Insurances to meet your Legal and Contractual Obligations

Unless the type of work covered by this Contract is exempted¹, State Legislation and this Contract require you to hold or obtain a **complying** Home Warranty Insurance policy. You **must also** provide the owner with the copy of a certificate issued under that policy for the work covered by this contract [refer to Clause **5.3(c)** or **5.4.1(d)**].

The Contract also obliges you - or the Owner - to obtain Contract Works and Public Liability Insurances (**See** clauses **6.2** and **6.3.**)

Through MBA Insurance Services, the Master Builders Association can **help builders and owners meet all their insurance requirements.**

MBA Insurance Services operates solely to deliver insurance products for and to the building and construction industry.

To arrange a quotation, cover or to obtain professional advice for

- Contract Works and Liability Insurance
- Warranty Insurance
- Any other form of General Insurance

call 1800 150 888



¹ Please obtain legal advice to determine whether or not this particular work is exempt from this requirement. Members of Master Builders may obtain this advice, free of charge, from the Legal Department of the Association.